

Warren County Sheriff's Office Accident Report

regarding Ethan Allen accident

Four (4) pages total including this cover

Warren County Sheriff's Office

1400 State Route 9
Lake George, New York 12845
(518) 743-2500

Larry J. Cleveland
Warren County Sheriff

Major John R. Shine
Division Commander
Law Enforcement Division



Undersheriff Shane L. Ross
Division Commander
Administrative Services Division

Captain Michael T. Gates
Division Commander
Correction Division

January 2006

"Ethan Allen" Accident - October 2, 2005 Incident # 2005-13724

On October 2, 2005, the "Ethan Allen", a 40' cruise boat on Lake George, capsized and sank just south of Cramer Point in the Town of Lake George. Of the 47 Michigan area residents on board, 27 survived and 20 perished.

A number of agencies have the authority to investigate accidents that result in loss of life or property. And while inquiries conducted simultaneously by more than one agency generally utilize similar methods and practices, each agency has their own specific goals, objectives and legal mandates. In the case of the Ethan Allen, there were three primary agencies conducting investigations.

The NYS Office of Parks, Recreation and Historic Preservation has jurisdiction over navigation on the navigable waters of the state. Along with many other duties and responsibilities, they inspect and license public vessels, such as the Ethan Allen. They have the power to issue reports and to make recommendations for new or amended state laws. The Office also has the authority to promulgate their own rules and regulations related to navigation safety. They clearly have a compelling interest and justification for being involved in the investigation of this accident. However, any determinations, reports or recommendations they release will be independent of our report.

The National Transportation Safety Board conducts investigations of major accidents involving transportation. They do not have any regulatory or enforcement power. To ensure their investigations focus only on improving transportation safety, their analysis of factual information and determination of probable cause cannot be entered as evidence in a court of law. They have good reason to be investigating this accident for the specific purpose of enhancing transportation safety. But again, any determinations, reports or recommendations they release will be independent of our report.

The Warren County Sheriff's Office is a criminal law enforcement agency. We have no authority to promulgate rules and regulations regarding navigation safety, nor do we have the authority to enact or change state law. Our responsibility in a case such as this is to conduct a criminal investigation. Where there is clear criminal conduct, the Sheriff's Office files the appropriate charge. In many circumstances, however, the Sheriff's Office refers the matter to the District Attorney's Office for legal review.

Our agencies worked together in an atmosphere of mutual cooperation and respect. While we each had our own duties and obligations, we significantly improved our efforts by sharing intelligence and information, working in collaborative teams, and acknowledging our goals and objectives were not always the same.

The primary responsibility of the Sheriff's Office was to complete a full and thorough criminal investigation. To meet this responsibility, we sought to investigate the conduct of the persons involved in this incident in an effort to determine if criminal culpability existed. Under New York State Penal Law, conduct may be criminal if it was carried out intentionally, knowingly, recklessly or with criminal negligence. The Penal Law defines these culpable mental states as follows:

1. **"Intentionally."** A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objectives to cause such result or to engage in such conduct.

2. **"Knowingly."** A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

3. **"Recklessly."** A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

4. **"Criminal negligence."** A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

NYS Penal Law Article 15, Section 15.05 (emphasis added)

In completing the criminal investigation, the Sheriff's Office followed every possible lead to determine whether the captain or the owners of the vessel acted under any of these requisite mental states. Based on the information and data known at this time, the Sheriff's Office is declining to file criminal charges and is referring this matter to the District Attorney's Office for further legal review. The mandate of the Sheriff's Office was to complete a criminal investigation, and with the enclosed documentation, we present to the public our completed criminal investigation into this accident.

The investigations focusing on improving transportation safety and reviewing commercial navigation on state waterways are still in progress. Responsibility for determining the cause of the accident and for any safety recommendations or calls for legislative changes rests with those agencies still laboring to complete their respective inquiries.

Sincerely,


Larry J. Cleveland
Sheriff